

No. 13-16101

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GARY KREMEN,
Plaintiff-Appellant,

v.

MICHAEL JOSEPH COHEN, an individual, and FNBPAY CORPORATION, an
Arizona corporation,
Defendants-Appellees,

Appeal from the United States District Court for the Northern District of California
Civil Case Number: 11-CV-05411-LHK (Honorable Lucy H. Koh)

**REPLY TO APPELLEES' RESPONSE TO APPELLANT'S MOTION TO
EXCEED WORD COUNT LIMITATION FOR REPLY BRIEF AND
MOTION TO STRIKE APPELLANT'S REPLY BRIEF [NINTH CIRCUIT
RULE 32-2 AND FRAP RULE 27(a)(3)(B)]**

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ARGUMENT

In connection with Appellees' response to Kremen's Motion to Exceed Word Count Limitation (the "Word Count Motion"), Appellees move this Court to strike Appellant's Reply Brief. The sole basis of Appellees' motion to strike is that Kremen's Word Count Motion was not filed at or before the time of filing of Kremen's Reply Brief. Significantly, Appellees articulate no prejudice supporting the drastic relief requested of striking the entirety of Kremen's Reply Brief and Kremen opposes Appellees' motion to strike on that basis. Indeed, rather than suffering prejudice, Appellees have seized the opportunity to file a disguised sur-reply opposing Kremen's Appeal, as Appellees' arguments therein appear directed towards the arguments made by Kremen's Reply rather than the merits of Kremen's request for a word limit extension.

Dated: January 10, 2014

Respectfully submitted,
DILLON & GERARDI, APC

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